TESTIMONY OF CHARLES MADDOX
INTERIM INSPECTOR GENERAL
BEFORE THE D.C. COUNCIL
COMMITTEE ON GOVERNMENT OPERATIONS

PUBLIC HEARING ON
BILL 13-143
THE "OFFICE OF THE INSPECTOR GENERAL LAW ENFORCEMENT
POWERS AND DUTIES AMENDMENT ACT OF 1999"

APRIL 12, 1999—3:00 P.M.

CHAIRPERSON PATTERSON AND MEMBERS OF THE COMMITTEE:

I AM VERY PLEASED TO TESTIFY TODAY AT THIS PUBLIC HEARING CONCERNING BILL 13-143, KNOWN AS THE "OFFICE OF THE INSPECTOR GENERAL LAW ENFORCEMENT POWERS AND DUTIES AMENDMENT ACT OF 1999." I WOULD LIKE TO EXPRESS MY APPRECIATION TO COUNCILMEMBERS KATHY PATTERSON AND DAVID CATANIA FOR INTRODUCING THIS BILL, WHICH CONTAINS A NUMBER OF EXTREMELY IMPORTANT REVISIONS AND ADDITIONS TO THE STATUTE GOVERNING THE POWERS AND DUTIES OF THE OFFICE OF THE INSPECTOR GENERAL (WHICH I WILL REFER TO HEREINAFTER AS THE"OIG").

THESE REVISIONS AND ADDITIONS TO OUR STATUTE ARE DESIGNED TO ACHIEVE SEVERAL DIFFERENT PURPOSES. SOME CODIFY CERTAIN ESSENTIAL AND ALREADY EXISTING PRACTICES OF THE OFFICE, SUCH AS OUR POLICY OF INDEPENDENTLY GENERATING INVESTIGATIONS BASED ON COMPLAINTS OF CITIZENS RATHER THAN ONLY ACCEPTING INVESTIGATIONS REFERRED FROM THE MAYOR'S OFFICE. OTHER CHANGES ARE TO RESOLVE A NUMBER OF OMISSIONS OR AMBIGUITIES IN THE OIG STATUTE AND MAKE THE OIG'S POWERS MORE CLOSELY RESEMBLE THOSE OF FEDERAL INSPECTOR GENERALS' OFFICES. FINALLY, AND PERHAPS

MOST IMPORTANTLY, A NUMBER OF THEM INCREASE THE INDEPENDENCE OF THE OIG.

BEFORE I EXPLAIN THE REASONS FOR EACH PROPOSED REVISION OR ADDITION TO THE OIG STATUTE, A BRIEF REVIEW OF THE HISTORY OF THE DEVELOPMENT OF THE OIG'S AUTHORITY WILL HELP PLACE THE PROPOSED AMENDMENTS TO THE CURRENT OIG STATUTE IN PROPER CONTEXT. IN ORDER TO STREAMLINE MY TESTIMONY, I HAVE OMITTED SOME OF THE LEGAL CITATIONS THAT HAVE PREVIOUSLY BEEN SUBMITTED TO YOU IN OUR WRITTEN LEGISLATIVE PROPOSALS.

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PRIOR TO 1986, THERE WAS NO STATUTE CREATING OR GOVERNING THE OIG. INSTEAD, THE OFFICE WAS ESTABLISHED IN 1979 BY AN ORDER ISSUED BY THE MAYOR. THE ORDER CREATED THE OIG, NOT AS AN INDEPENDENT AGENCY, AS IT IS NOW, BUT AS AN OFFICE "IN THE EXECUTIVE OFFICE OF THE MAYOR."

OUR PRESENT STATUTE, WHICH IS CODIFIED AT D.C. CODE § 1-1182.8, IS AN AMALGAM OF TWO LAWS ENACTED ALMOST A DECADE APART – THE DISTRICT OF COLUMBIA PROCUREMENT PRACTICES ACT OF 1985, D.C. LAW 6-85 (ADOPTED FEB. 21, 1986) (HEREINAFTER, "THE PPA"), AND THE DISTRICT OF COLUMBIA FINANCIAL RESPONSIBILITY AND MANAGEMENT ASSISTANCE ACT OF 1995, PUB. L. NO. 104-8, § 303 (ADOPTED APR. 17, 1995) ("THE FRMAA"). THE LATTER, OF COURSE, IS THE SAME LEGISLATION THAT ESTABLISHED THE D.C. FINANCIAL RESPONSIBILITY AND MANAGEMENT ASSISTANCE AUTHORITY, OR "THE AUTHORITY".

ALTHOUGH THE PPA REMOVED THE OIG FROM THE MAYOR'S OFFICE, IT DID NOT MAKE THE OIG FULLY INDEPENDENT. FOR EXAMPLE, UNDER THE PPA, THE IG SERVED FOR FOUR YEARS RATHER THAN SIX, AS IS NOW THE CASE, AND COULD NOT SERVE MORE THAN THREE MONTHS BEYOND THE TERM OF THE MAYOR WHO APPOINTED HIM. THE PPA ALSO REQUIRED THE IG TO PERFORM AUDITS AND INVESTIGATIONS ASSIGNED BY THE MAYOR AND TO

FORWARD TO THE MAYOR ANY EVIDENCE OF CRIMINAL WRONGDOING FOUND IN THE COURSE OF AN INVESTIGATION.

SETTING OUT, AMONG OTHER THINGS, TO "[H]EIGHTEN THE RESPONSIBILITIES OF THE DISTRICT OF COLUMBIA INSPECTOR GENERAL TO CONFORM WITH THE FEDERAL INSPECTOR GENERAL REGULATIONS/CRITERIA," CONGRESS IN 1995 ENACTED THE FRMAA. TO THAT END, THE FRMAA AMENDED SOME OF THE PROVISIONS OF OUR STATUTE, LEFT OTHERS UNCHANGED, AND ADDED SOME ENTIRELY NEW PROVISIONS. A NUMBER OF THE FRMAA'S PROVISIONS WERE BORROWED FROM THE INSPECTOR GENERAL ACT OF 1978—HEREINAFTER THE "IG ACT"--WHICH GOVERNS MANY OF THE FEDERAL IG OFFICES.

ACCORDING TO ITS LEGISLATIVE HISTORY, ONE OF THE PURPOSES OF THE FRMAA WAS TO STRENGTHEN THE INDEPENDENCE OF THE OIG. I HAVE SELECTED A FEW EXAMPLES OF FLOOR STATEMENTS FROM THE CONGRESSIONAL RECORD SUPPORTING THAT VIEW.

STATEMENT OF REP. TOM DAVIS: "WE HAVE TAKEN SPECIAL CARE TO MAKE SURE THE IG HAS THE POLITICAL INDEPENDENCE AND FINANCIAL RESOURCES TO ACT AS A STRONG WATCHDOG OVER THE CITY GOVERNMENT." 141 CONG. REC. H4067 (APR. 3, 1995).

STATEMENTS OF REP. JAMES WALSH: "ANOTHER POSITION THAT IS KEY TO THE SUCCESS OF THE AUTHORITY IS AN INSPECTOR GENERAL WHO ALSO MUST BE TRULY INDEPENDENT TO PURSUE INVESTIGATIONS THAT WILL LEAD TO THE PREVENTION AND DETECTION OF FRAUD AND ABUSE." ID. AT H4068

"[I]T HAS BECOME GLARINGLY APPARENT THAT THE DISTRICT NEEDS A TRULY INDEPENDENT INSPECTOR GENERAL." 141 CONG. REC. E730 (MAR. 29, 1995)

NEVERTHELESS, EVEN NOW, THERE REMAIN IN OUR STATUTE – AS YOU WILL SEE IN MY TESTIMONY THAT FOLLOWS – SEVERAL PROVISIONS ENACTED AS PART OF THE PPA THAT PLACE OUR OFFICE IN A SUBORDINATE POSITION THAT IS

INCOMPATIBLE WITH ITS MISSION TO ROOT OUT CORRUPTION, MISMANAGEMENT, WASTE, FRAUD, AND ABUSE IN THE D.C. GOVERNMENT AND, THEREAFTER, TO MAKE CORRECTIVE RECOMMENDATIONS.

* * *

I WILL NOW ADDRESS EACH OF THE PROPOSED REVISIONS AND ADDITIONS TO THE DISTRICT OF COLUMBIA PROCUREMENT PRACTICES ACT OF 1985, THE STATUTE THAT GOVERNS THE OFFICE OF THE INSPECTOR GENERAL OF THE DISTRICT OF COLUMBIA. I WILL DISCUSS THEM IN THE ORDER THAT THEY APPEAR IN THE BILL AMENDING THAT ACT.

<u>THE FIRST PROPOSED AMENDMENT TO SECTION 208 OF THE ACT ADDS THE FOLLOWING NEW SUBSECTION</u>:

> "(B) IT IS THE PURPOSE OF THE OFFICE OF THE INSPECTOR GENERAL TO INDEPENDENTLY:
>
> (1) CONDUCT AND SUPERVISE AUDITS AND INVESTIGATIONS RELATING TO THE PROGRAMS AND OPERATIONS OF ALL DEPARTMENTS AND AGENCIES, INCLUDING INDEPENDENT AGENCIES, OF THE DISTRICT GOVERNMENT;
>
> (2) PROVIDE LEADERSHIP AND COORDINATION AND RECOMMEND POLICIES FOR ACTIVITIES DESIGNED (A) TO PROMOTE ECONOMY, EFFICIENCY, AND EFFECTIVENESS IN THE ADMINISTRATION OF, AND (B) TO PREVENT AND DETECT CORRUPTION, MISMANAGEMENT, WASTE, FRAUD, AND ABUSE IN, SUCH PROGRAMS AND OPERATIONS; AND
>
> (3) PROVIDE A MEANS FOR KEEPING THE HEADS OF DISTRICT GOVERNMENT DEPARTMENTS AND AGENCIES, THE MAYOR, THE D.C. COUNCIL, AND THE D.C. FINANCIAL RESPONSIBILITY AND MANAGEMENT ASSISTANCE AUTHORITY FULLY AND CURRENTLY INFORMED ABOUT PROBLEMS AND DEFICIENCIES

RELATING TO THE ADMINISTRATION OF SUCH PROGRAMS AND OPERATIONS AND THE NECESSITY FOR AND PROGRESS OF CORRECTIVE ACTION."

COMMENT

AT PRESENT, THE OIG STATUTE CONTAINS NO STATEMENT WHATSOEVER OF THE PURPOSE OF THE OFFICE. MAYOR'S ORDER 97-7, § 2 PROVIDED THAT "[T]HE PURPOSE OF THIS OFFICE IS TO MORE EFFECTIVELY PREVENT OR CORRECT FRAUD, ABUSE, WASTE, AND MISMANAGEMENT IN THE PROGRAMS AND OPERATIONS OF THE GOVERNMENT OF THE DISTRICT OF COLUMBIA," BUT THIS LANGUAGE WAS NEVER CODIFIED. THE PROPOSED SECTION ESTABLISHES OUR AUTHORITY NOT ONLY TO DETECT WASTE, FRAUD AND ABUSE, BUT TO RECOMMEND REMEDIES AS WELL. FINALLY, THE SECTION GIVES US THE LATITUDE TO DISSEMINATE OUR FINDINGS AND RECOMMENDATIONS DIRECTLY TO THE RELEVANT PARTIES.

THE PROPOSED ADDITION IS ADAPTED FROM, BUT IS NOT WORD-FOR-WORD THE SAME AS, A PROVISION OF THE FEDERAL IG ACT. SEE 5 U.S.C. APP. 3 § 2.

THE SECOND PROPOSED REVISION, WHICH APPEARS IN SECTION 2(SMALL B)(1) OF THE BILL, IS SET FORTH IN ITS ORIGINAL FORM WITH DELETIONS STRUCK THROUGH AND ADDITIONS UNDERLINED. I WILL READ ONLY THE PROPOSED LANGUAGE OF THE SECTION:

"THE INSPECTOR GENERAL SHALL * * * ~~ACT AS LIAISON REPRESENTATIVE FOR THE MAYOR FOR~~ BE RESPONSIBLE FOR PROCURING, ADMINISTERING, AND REPORTING ON ALL EXTERNAL AUDITS OF THE DISTRICT GOVERNMENT."

COMMENT:

WITH THE EXCEPTION OF THE D.C. RETIREMENT BOARD AND CERTAIN AGENCIES IN COURT-ORDERED RECEIVERSHIP, THE OIG HAS, FOR SEVERAL YEARS NOW, EXERCISED AUTHORITY OVER ALL EXTERNAL AUDITS OF D.C. GOVERNMENT AGENCIES. THAT IS, WHENEVER AN EXTERNAL AUDIT MUST BE PERFORMED, THIS OFFICE HAS TAKEN IT UPON ITSELF TO CONTRACT WITH AN OUTSIDE AUDITOR AND TO ADMINISTER THE AUDIT CONTRACT. WE HAVE TAKEN THE POSITION, MOREOVER, THAT THE PERFORMANCE OF THIS TASK IS WITHIN OUR EXCLUSIVE AUTHORITY, RELYING UPON D.C. CODE § 1-1182.8(A)(3)(B).

INFREQUENTLY, THERE HAVE BEEN CHALLENGES TO OUR EXTERNAL AUDIT AUTHORITY. UNFORTUNATELY, THE STATUTORY LANGUAGE – WHICH MAKES THE OIG THE "LIAISON REPRESENTATIVE FOR THE MAYOR" – IS NOT ENTIRELY CLEAR IN MEANING. THE PROPOSED REVISION WOULD CLARIFY THE STATUTORY BASIS FOR OUR EXISTING PRACTICE OF EXERCISING AUTHORITY OVER EXTERNAL AUDITS OF D.C. GOVERNMENT AGENCIES.

THE THIRD PROPOSED REVISION, WHICH APPEARS IN SECTION 2 (SMALL B)(2)OF THE BILL, IS SET FORTH IN ITS ORIGINAL FORM WITH CHANGES MARKED. AGAIN, I WILL READ ONLY THE PROPOSED LANGUAGE.

> "THE INSPECTOR GENERAL SHALL * * * ~~CONDUCT OTHER SPECIAL~~ INDEPENDENTLY CONDUCT SUCH AUDITS, ASSIGNMENTS, AND INVESTIGATIONS AS THE MAYOR SHALL ~~ASSIGN~~ REQUEST, AND SUCH OTHER AUDITS AND INVESTIGATIONS WHICH IN THE INSPECTOR GENERAL'S JUDGMENT ARE NECESSARY OR DESIRABLE."

COMMENT:

AT PRESENT, THERE ARE ONLY TWO PROVISIONS IN THE OIG STATUTE THAT AFFIRMATIVELY AUTHORIZE THE OIG TO CONDUCT INVESTIGATIONS. THE FIRST IS THE PROVISION QUOTED ABOVE, D.C. CODE § 1-1182.8(A)(3)(D), WHICH REQUIRES THE OIG TO CONDUCT INVESTIGATIONS ASSIGNED

BY THE MAYOR. THE SECOND, D.C. CODE § 1-1182.8(E), STATES THAT THE OIG "MAY UNDERTAKE REVIEWS AND INVESTIGATIONS, AND MAKE DETERMINATIONS OR RENDER OPINIONS AS REQUESTED BY THE AUTHORITY." THUS, THERE IS NO PROVISION IN THE OIG STATUTE THAT EXPRESSLY AUTHORIZES US TO CONDUCT INVESTIGATIONS NOT REFERRED TO US BY THE MAYOR OR THE AUTHORITY. THIS OMISSION LEAVES US VULNERABLE TO THE POTENTIAL ARGUMENT THAT THE OIG MAY ONLY CONDUCT INVESTIGATIONS REFERRED BY THE MAYOR OR THE AUTHORITY.

GIVEN THE FRMAA AND ITS LEGISLATIVE HISTORY, CONGRESS SURELY DID NOT INTEND THAT THE OIG WOULD CONDUCT ONLY THOSE INVESTIGATIONS REQUESTED BY THE MAYOR OR THE AUTHORITY. SUCH INVESTIGATIONS REPRESENT ONLY A VERY SMALL PART OF THE TOTAL NUMBER OF INVESTIGATIONS WE ACTUALLY CONDUCT NOW. MUCH LIKE OUR FEDERAL COUNTERPARTS, MOST OF OUR INVESTIGATIONS ARE INITIATED BY THIS OFFICE ON THE BASIS OF FACTS BROUGHT TO OUR ATTENTION BY OTHER AGENCIES OR BY CONCERNED INDIVIDUALS WHO CONTACT US ON OUR TELEPHONE HOTLINE, BY MAIL, OR BY OTHER MEANS. THE PROPOSED REVISION WOULD MAKE CLEAR THAT THIS OFFICE HAS THE AUTHORITY TO OPEN AN INVESTIGATION WHEN THE IG DETERMINES THAT ONE IS WARRANTED. THAT IS WHAT WE DO NOW, SO OUR REVISION WOULD SIMPLY CODIFY CURRENT PRACTICE.

FINALLY, THE PROPOSED REVISION WOULD UNDERSCORE THE FACT THAT THE OIG ACTS INDEPENDENTLY IN THE CONDUCT OF ITS AUDITS AND INVESTIGATIONS.

THE FOURTH PROPOSED REVISION, WHICH APPEARS IN SECTION 2(SMALL B)(3) OF THE BILL, IS SET FORTH IN ITS ORIGINAL FORM WITH CHANGES MARKED. AGAIN, I WILL READ ONLY THE PROPOSED LANGUAGE:

"THE INSPECTOR GENERAL SHALL * * * FORWARD TO ~~THE MAYOR AND~~ THE APPROPRIATE AUTHORITY ANY REPORT, ~~EVIDENCE OF CRIMINAL WRONGDOING, THAT IS DISCOVERED~~ AS A RESULT OF ANY INVESTIGATION OR AUDIT CONDUCTED BY THE OFFICE, IDENTIFYING MISCONDUCT OR UNETHICAL BEHAVIOR."

COMMENT:

THE CURRENT LANGUAGE OF THE OIG STATUTE – WHICH STATES THAT THE OIG SHALL FORWARD "EVIDENCE OF CRIMINAL WRONGDOING" TO THE MAYOR – IS A HOLDOVER FROM THE DAYS WHEN THE OIG WAS UNDER THE MAYOR'S DIRECT CONTROL, AND SHOULD BE CHANGED. TO BEGIN WITH, THE POINT OF THIS PROVISION WAS LARGELY SUPERCEDED BY A PROVISION SUBSEQUENTLY ENACTED BY CONGRESS AS PART OF PUBLIC LAW 104-8 (THE FRMAA), WHICH REQUIRES THE OIG TO REFER EVIDENCE OF CRIMES TO THE DEPARTMENT OF JUSTICE. THIS PROVISION IS CARRIED OVER INTO THE D.C. CODE AT SECTION 1-1182.8(F) AS FOLLOWS: "IN CARRYING OUT THE DUTIES AND RESPONSIBILITIES ESTABLISHED UNDER THIS SECTION, THE INSPECTOR GENERAL SHALL REPORT EXPEDITIOUSLY TO THE ATTORNEY GENERAL WHENEVER THE INSPECTOR GENERAL HAS REASONABLE GROUNDS TO BELIEVE THERE HAS BEEN A VIOLATION OF FEDERAL OR DISTRICT CRIMINAL LAW." THUS, THERE REALLY IS NO NEED FOR THE OIG TO PROVIDE THE MAYOR WITH EVIDENCE OF CRIMINAL WRONGDOING. MORE FUNDAMENTALLY, FOR THE OIG TO PROVIDE SUCH EVIDENCE TO THE MAYOR'S OFFICE SERVES NO DISCERNIBLE LAW ENFORCEMENT PURPOSE AND COULD COMPROMISE THE INTEGRITY OF THE OIG'S INVESTIGATIONS.

THE PROPOSED REVISION WOULD ALSO RETAIN AND CLARIFY THE STATUTORY BASIS FOR OUR EXISTING PRACTICE OF FORWARDING EVIDENCE OF WRONGDOING THAT FALLS SHORT OF A CRIME – SUCH AS A NON-CRIMINAL STATUTORY VIOLATION, A VIOLATION OF PERSONNEL REGULATIONS, OR A VIOLATION OF ETHICS RULES – TO AGENCY HEADS AND OTHER APPROPRIATE PERSONS AND BODIES FOR ADMINISTRATIVE OR CIVIL ACTION.

THE FIFTH PROPOSED CHANGE, AN ADDITION, APPEARS IN SECTION 2 (SMALL B-1) OF THE BILL, AND READS AS FOLLOWS:

"THE INSPECTOR GENERAL IS AUTHORIZED TO ADMINISTER TO OR TAKE FROM ANY PERSON AN OATH, AFFIRMATION, OR AFFIDAVIT, WHENEVER NECESSARY IN THE PERFORMANCE OF THE INSPECTOR GENERAL'S DUTIES."

COMMENT:

THE PROPOSED ADDITION WOULD CODIFY AND CLARIFY THIS OFFICE'S EXISTING AUTHORITY TO ADMINISTER OATHS, WHICH COMES FROM MAYOR'S ORDER NUMBER 90-146, DATED OCT. 31, 1990. SECTION ONE OF THIS ORDER PROVIDES THAT THE IG AND HIS STAFF MAY "ADMINISTER OATHS TO WITNESSES IN ANY INVESTIGATION OR EXAMINATION OF ANY MUNICIPAL MATTER."

THE PROPOSED ADDITION WOULD ALSO REMOVE AN APPARENT JURISDICTIONAL LIMITATION UPON THE SCOPE OF THE OIG'S AUTHORITY TO ADMINISTER OATHS. ACCORDING TO AN OPINION WE SOUGHT TO CLARIFY THIS ISSUE, THE CORPORATION COUNSEL ADVISED US THAT THE IG GETS HIS OATH-ADMINISTRATION POWER FROM A DELEGATION OF POWER BY THE MAYOR – AND HENCE IS LIMITED BY THE SCOPE OF THE MAYOR'S POWER. THEREFORE, THE IG'S POWER EXTENDS TO "ANY MATTER PERTAINING TO THE EXECUTIVE FUNCTIONS OF THE DISTRICT GOVERNMENT, INCLUDING THE ORGANIZATION, MANAGEMENT, AND ADMINISTRATION OF DISTRICT PROGRAMS AND EXECUTIVE OFFICES, AND IN PREPARING AND AUDITING THE BUDGET." UNDER THE PROPOSED ADDITION, WE WOULD NOT BE LIMITED IN OUR ADMINISTERING OF OATHS TO MATTERS RELATING TO "THE EXECUTIVE FUNCTIONS" OF THE D.C. GOVERNMENT.

THE LANGUAGE OF THE PROPOSED ADDITION IS TAKEN FROM THE IG ACT. SEE U.S.C. APP. 3 § 6(A)(5).

THE SIXTH PROPOSED CHANGE, AN ADDITION, APPEARS IN SECTION 2 (SMALL D) OF THE BILL, AND READS AS FOLLOWS:

"THE INSPECTOR GENERAL SHALL NOT, AFTER RECEIPT OF A COMPLAINT OR INFORMATION FROM ANY PERSON, DISCLOSE THE IDENTITY OF SUCH PERSON WITHOUT SUCH PERSON'S CONSENT, UNLESS THE INSPECTOR GENERAL DETERMINES THAT SUCH DISCLOSURE IS UNAVOIDABLE OR NECESSARY TO FURTHER THE ENDS OF AN INVESTIGATION."

COMMENT:

THE PROPOSED ADDITION WOULD FORBID THE OIG FROM DISCLOSING THE NAMES OF COMPLAINANTS, WITNESSES, AND INFORMANTS. IT THUS WOULD ALLOW THE OIG TO GIVE ASSURANCES TO SUCH PERSONS THAT THEIR IDENTITIES WILL REMAIN CONFIDENTIAL IF THEY SPEAK TO US, ABSENT, OF COURSE, AN ORDER FROM A COURT OF COMPETENT JURISDICTION.

IT HAS BEEN OUR EXPERIENCE THAT PERSONS WHO REPORT FRAUD OR WASTE TO THIS OFFICE FREQUENTLY ARE CONCERNED THAT THEIR IDENTITIES MAY BE DISCLOSED TO THEIR SUPERIORS – WHO MAY WELL BE THE INDIVIDUALS RESPONSIBLE FOR THE FRAUD OR WASTE IN QUESTION. AT PRESENT, WE CAN ONLY ASSURE SUCH PERSONS THAT IT IS OUR POLICY NOT TO REVEAL THE IDENTITIES OF OUR SOURCES. WHEN PRESSED, HOWEVER, WE ARE UNABLE TO PROVIDE FURTHER ASSURANCES THAT WE CAN PROTECT THEIR CONFIDENTIALITY. WE BELIEVE THAT THIS SITUATION UNDERMINES OUR ABILITY TO ENCOURAGE DISTRICT EMPLOYEES TO REPORT TO THE OIG SERIOUS PROBLEMS AND ILLEGALITIES THAT COME TO THEIR ATTENTION AS PART OF THEIR OFFICIAL DUTIES.

THE LANGUAGE OF THE PROPOSAL ALSO COMES FROM THE IG ACT.

THE SEVENTH PROPOSED REVISION, WHICH APPEARS IN SECTION 2(SMALL E) OF THE BILL, IS SET FORTH IN ITS ORIGINAL FORM WITH CHANGES MARKED. I WILL READ ONLY THE PROPOSED LANGUAGE:

"THE INSPECTOR GENERAL SHALL HAVE ACCESS TO ALL BOOKS, ACCOUNTS, RECORDS, REPORTS, FINDINGS, AND ALL OTHER PAPERS, THINGS, OR PROPERTY BELONGING TO OR IN USE BY ~~ANY DEPARTMENT OR AGENCY UNDER THE DIRECT SUPERVISION OF THE MAYOR~~ THE DISTRICT GOVERNMENT NECESSARY TO FULFILL THE INSPECTOR GENERAL'S WORK."

COMMENT:

THE PROPOSED REVISION WOULD ALLOW THE OIG TO INSPECT THE DOCUMENTS AND RECORDS OF ANY ENTITY WITHIN THE D.C. GOVERNMENT – NOT JUST THOSE DEPARTMENTS AND AGENCIES "UNDER THE DIRECT SUPERVISION OF THE MAYOR." UNDER THE CURRENT LANGUAGE, THE OIG LACKS SUCH INSPECTION POWER WITH RESPECT TO THOSE PARTS OF THE D.C. GOVERNMENT THAT THE MAYOR DOES NOT DIRECTLY SUPERVISE. A NUMBER OF AGENCIES THUS FALL AT PRESENT OUTSIDE OF THE OIG'S INSPECTION POWER, INCLUDING THE DISTRICT'S INDEPENDENT AGENCIES, SUCH AS THE D.C. HOUSING AUTHORITY, THE WATER AND SEWER AUTHORITY, AND D.C. PUBLIC SCHOOLS. THE OIG CAN COMPEL THE PRODUCTION OF DOCUMENTS FROM SUCH AGENCIES WITH ITS SUBPOENA POWER , AS PROVIDED BY D.C. CODE § 1-1182.8(C)(2). HOWEVER, IT IS DESIRABLE FOR THE OIG TO BE ABLE TO INSPECT THE DOCUMENTS AND RECORDS OF ALL D.C. GOVERNMENT AGENCIES WITHOUT HAVING TO RESORT TO THE USE OF SUBPOENAS.

THE EIGHTH PROPOSED CHANGE, AN ADDITION, APPEARS IN SECTION 2 (SMALL E) OF THE BILL, AND READS AS FOLLOWS:

"THE INSPECTOR GENERAL SHALL PREPARE AN ANNUAL REPORT NOT LATER THAN NOVEMBER 30 OF EACH YEAR SUMMARIZING THE ACTIVITIES OF THE OFFICE DURING THE PRECEDING FISCAL YEAR. UPON ITS COMPLETION, THE INSPECTOR GENERAL SHALL TRANSMIT THE REPORT TO THE MAYOR, THE COUNCIL, AND THE APPROPRIATE COMMITTEES OR SUBCOMMITTEES OF CONGRESS. THE INSPECTOR GENERAL SHALL MAKE COPIES OF THE REPORT AVAILABLE TO THE PUBLIC UPON REQUEST AND AT A REASONABLE COST."

COMMENT:

THE OIG IS REQUIRED TO SUBMIT TO CONGRESS BRIEF QUARTERLY REPORTS ON THE NUMBER AND NATURE OF CALLS PLACED TO THE OIG'S TELEPHONE HOTLINE. AT PRESENT, HOWEVER, THE OIG IS NOT REQUIRED TO PRODUCE ANY KIND OF PERIODIC, COMPREHENSIVE REPORT COVERING ALL OF ITS ACTIVITIES.

WE BELIEVE THAT IT WOULD BE DESIRABLE FOR THE OIG TO PREPARE AN ANNUAL REPORT BECAUSE IT HELPS MAKE THE IG ACCOUNTABLE TO THE PUBLIC. FOR THIS REASON, SUCH REPORTS SHOULD BE STATUTORILY REQUIRED. INDEED, THIS OFFICE PRODUCED AN ANNUAL REPORT FOR FY 98 EVEN THOUGH THERE WAS NO REQUIREMENT TO DO SO.

THE LANGUAGE OF THE PROPOSED ADDITION IS MODELED UPON LANGUAGE IN THE IG ACT, WHICH REQUIRES FEDERAL IG OFFICES TO PREPARE SEMIANNUAL REPORTS. SEE 5 U.S.C. APP. 3 § 5(A), (B), (C).

THE NINTH PROPOSED CHANGE, AN ADDITION, APPEARS IN SECTION 2 (SMALL H) OF THE BILL, AND READS AS FOLLOWS:

"FAILURE ON THE PART OF ANY DISTRICT GOVERNMENT EMPLOYEE OR CONTRACTOR TO COOPERATE WITH THE INSPECTOR GENERAL SHALL BE GROUNDS FOR APPROPRIATE ADMINISTRATIVE ACTIONS, TO INCLUDE LOSS OF EMPLOYMENT OR THE TERMINATION OF AN EXISTING CONTRACTUAL RELATIONSHIP."

COMMENT:

THE PROPOSED ADDITION WOULD MAKE AN EMPLOYEE'S OR A CONTRACTOR'S FAILURE TO COOPERATE WITH THE OIG GROUNDS FOR SANCTIONS, INCLUDING THE TERMINATION OF EMPLOYMENT OR CONTRACTUAL RELATIONS. THE PROPOSED ADDITION THUS GOES FURTHER THAN SECTION 1803.8 OF THE D.C. PERSONNEL MANUAL, WHICH READS AS FOLLOWS: "AN EMPLOYEE SHALL NOT INTERFERE WITH OR OBSTRUCT AN INVESTIGATION BY A DISTRICT OR FEDERAL AGENCY OF MISCONDUCT BY ANOTHER DISTRICT EMPLOYEE OR A PERSON DEALING WITH THE DISTRICT." UNLIKE THE PROPOSED ADDITION, DPM § 1803.8 APPLIES ONLY TO INTERFERENCE AND OBSTRUCTION OF AN INVESTIGATION AND DOES NOT REACH FAILURE TO COOPERATE. MOREOVER, THE PROPOSED ADDITION, UNLIKE DPM § 1803.8, REACHES GOVERNMENT CONTRACTORS. THIS ADDITION WOULD NOT INTERFERE, OF COURSE, WITH A INDIVIDUAL'S RIGHTS UNDER THE SUPREME COURT'S MIRANDA AND GARRITY DECISIONS.

THE PROPOSED ADDITION IS MODELED AFTER A PROVISION IN THE STATUTE GOVERNING THE CIA'S IG OFFICE. SEE 50 U.S.C. § 403Q(E)(2).

THE LAST PROPOSED CHANGE, AN ADDITION, APPEARS IN SECTION 2 (SMALL I) OF THE BILL, AND READS AS FOLLOWS:

"ANYONE WHO HAS AUTHORITY TO TAKE OR DIRECT OTHERS TO TAKE, RECOMMEND, OR APPROVE ANY PERSONNEL ACTION, SHALL NOT, WITH RESPECT TO SUCH AUTHORITY, TAKE OR THREATEN TO TAKE ANY

ACTION AGAINST ANOTHER AS A REPRISAL FOR MAKING A COMPLAINT OR DISCLOSING INFORMATION TO THE INSPECTOR GENERAL, UNLESS THE COMPLAINT WAS MADE OR THE INFORMATION DISCLOSED WITH THE KNOWLEDGE THAT IT WAS FALSE OR WITH WILLFUL DISREGARD FOR ITS TRUTH OR FALSITY."

COMMENT:

THE PROPOSED ADDITION WOULD MAKE IT UNLAWFUL FOR ANYONE TO RETALIATE AGAINST SOMEONE WHO FILES A COMPLAINT WITH OR DISCLOSES INFORMATION TO THE OIG. THE PROPOSED ADDITION OVERLAPS WITH LEGISLATION ENACTED BY THE D.C. COUNCIL EARLIER THIS YEAR, THE WHISTLEBLOWER REINFORCEMENT AMENDMENT ACT OF 1998, D.C. ACT 12-400 (HEREINAFTER, "THE WHISTLEBLOWER ACT"), BUT DIFFERS IN CERTAIN IMPORTANT RESPECTS.

THE WHISTLEBLOWER ACT MAKES IT UNLAWFUL FOR A SUPERVISOR TO "THREATEN TO TAKE OR TAKE A PROHIBITED PERSONNEL ACTION OR OTHERWISE RETALIATE AGAINST AN EMPLOYEE BECAUSE OF THE EMPLOYEE'S PROTECTED DISCLOSURE" TO THE OIG OR CERTAIN OTHER PUBLIC BODIES. SEE § 102(C). THE ACT DEFINES A "PROTECTED DISCLOSURE" AS

"ANY DISCLOSURE OF INFORMATION, NOT SPECIFICALLY PROHIBITED BY STATUTE, BY AN EMPLOYEE TO A SUPERVISOR OR A PUBLIC BODY THAT THE EMPLOYEE REASONABLY BELIEVES EVINCES:

(A) GROSS MISMANAGEMENT;

(B) GROSS MISUSE OR WASTE OF PUBLIC RESOURCES OR FUNDS;

(C) ABUSE OF AUTHORITY IN CONNECTION WITH THE ADMINISTRATION OF A PUBLIC PROGRAM OR THE EXECUTION OF A PUBLIC CONTRACT;

(D) A VIOLATION OF A FEDERAL, STATE, OR LOCAL LAW, RULE, OR REGULATION, OR OF A TERM OF A CONTRACT BETWEEN THE DISTRICT GOVERNMENT AND A DISTRICT GOVERNMENT CONTRACTOR WHICH IS NOT OF A MERELY TECHNICAL OR MINIMAL NATURE; OR

(E) A SUBSTANTIAL AND SPECIFIC DANGER TO THE PUBLIC HEALTH AND SAFETY."

THE MOST IMPORTANT DIFFERENCE BETWEEN THE PROPOSED ADDITION AND THE WHISTLEBLOWER ACT IS THAT THE LATTER ONLY PROTECTS FROM RETALIATION THOSE PERSONS WHO VOLUNTARILY COME FORWARD WITH INFORMATION, WHEREAS THE PROPOSED ADDITION ALSO PROVIDES PROTECTION TO THOSE WHOM THIS OFFICE COMPELS TO TESTIFY. IT IS VERY IMPORTANT THAT RELUCTANT WITNESSES AS WELL AS WHISTLEBLOWERS HAVE SOME ASSURANCE THAT THEY WILL NOT SUFFER RETRIBUTION FOR PROVIDING INFORMATION TO THE OIG.

ANOTHER DIFFERENCE BETWEEN THE TWO IS THAT THE PROPOSED ADDITION APPLIES TO ALL DISCLOSURES OF INFORMATION, WHILE THE WHISTLEBLOWER ACT APPLIES ONLY TO THOSE DISCLOSURES OF INFORMATION WHICH "EVINCE" THE OCCURRENCES LISTED ABOVE. THEREFORE, THE WHISTLEBLOWER ACT, UNLIKE THE PROPOSED ADDITION, DOES NOT PROTECT SOMEONE WHO DISCLOSES TO US INFORMATION TENDING TO REFUTE OR DISPUTE A CLAIM MADE BY SOMEONE ELSE THAT ONE OF THESE EVENTS HAD OCCURRED.

A FINAL DIFFERENCE IS THAT THE WHISTLEBLOWER ACT DOES NOT PROTECT SOMEONE WHO LACKS A REASONABLE BELIEF THAT HE OR SHE IS PROVIDING THE SORT OF INFORMATION COVERED BY THE STATUTE, WHEREAS THE PROPOSED ADDITION PROTECTS SOMEONE SO LONG AS HE OR SHE DOES NOT ACTUALLY KNOW THE INFORMATION IS FALSE OR DOES NOT WILFULLY DISREGARD THE TRUTH OR FALSITY OF THE INFORMATION.

THE LANGUAGE OF THE PROPOSED ADDITION COMES FROM THE IG ACT. SEE 5 U.S.C. APP. 3 § 7(C).

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AT THIS POINT IN MY TESTIMONY, WITH LEAVE OF THE COUNCIL, I WOULD LIKE TO COMMENT BRIEFLY ON TWO ADDITIONAL LEGISLATIVE PROPOSALS WHICH WERE

SUBMITTED TO CORPORATION COUNSEL AFTER THE PROPOSED AMENDMENTS THAT I HAVE ALREADY DISCUSSED. THE PURPOSE OF THESE ADDITIONAL PROPOSALS IS TO RELIEVE OUR OFFICE OF CERTAIN MANDATORY FUNCTIONS IN ORDER TO PERMIT US TO USE OUR RESOURCES IN WAYS THAT WE BELIEVE ARE MORE RESPONSIVE TO THE CITY'S NEEDS.

THE FIRST PROPOSED AMENDMENT WOULD MAKE CERTAIN REQUIRED AUDITS DISCRETIONARY:

DISTRICT OF COLUMBIA LAW REQUIRES THE OIG TO CONDUCT ANNUAL AUDITS OF THE ANTIFRAUD FUND, THE ACCOUNTS OF THE BOARD OF PROFESSIONAL ENGINEERS, AND THE HOME PURCHASE ASSISTANCE FUND. THE OIG'S LIMITED AUDIT RESOURCES COULD BE BETTER SPENT BY AUDITING OTHER PARTS OF THE D.C. GOVERNMENT. THEREFORE, WE PROPOSE THAT THE LANGUAGE OF THE STATUTE BE AMENDED TO REFLECT THAT THE OIG BE AUTHORIZED TO CONDUCT SUCH AUDITS AT ITS DISCRETION AND NOT BE REQUIRED TO PERFORM THESE AUDITS ANNUALLY.

COMMENT:

ONE OF THE OIG'S PRINCIPAL STATUTORY RESPONSIBILITIES IS TO CONDUCT "INDEPENDENT FISCAL AND MANAGEMENT AUDITS OF DISTRICT GOVERNMENT OPERATIONS." D.C. CODE § 1-1182.8(A)(3)(A). IN FISCAL YEAR 1998 THE OIG'S AUDIT DIVISION ISSUED 23 AUDIT REPORTS. IN FISCAL YEAR 1999, THE DIVISION WILL ISSUE NO FEWER THAN 29 REPORTS. THE ACTIVITIES OF THE AUDIT DIVISION AND ITS EXTERNAL CONTRACT AUDITORS IN FISCAL YEAR 1998 RESULTED IN $12.5 MILLION IN POTENTIAL COST SAVINGS AND REVENUE ENHANCEMENTS FOR THE DISTRICT. ANOTHER $24.5 MILLION IN SUCH COST SAVINGS AND REVENUE ENHANCEMENTS IS ATTRIBUTABLE TO AUDIT ACTIVITIES IN THE FIRST QUARTER OF FISCAL YEAR 1999 ALONE.

ALTHOUGH THE OIG AUDIT DIVISION HAS BEEN EXTREMELY ACTIVE AND EFFECTIVE, THERE ARE LIMITS TO WHAT ITS STAFF OF 18 AUDITORS CAN DO. THE DISTRICT GOVERNMENT CONSISTS OF 68 AGENCIES WITH A COMBINED ANNUAL BUDGET OF BETTER THAN $5 BILLION; 55 OF THESE AGENCIES (WITH A COMBINED BUDGET OF $2.6 BILLION) HAVE NOT BEEN AUDITED IN THE PAST FIVE YEARS. ACCORDINGLY, THE AUDIT DIVISION MUST BE, AND IS, CAREFUL TO ALLOCATE ITS LIMITED RESOURCES WHERE THEY ARE NEEDED MOST.

BY LAW, THE OIG IS REQUIRED TO CONDUCT THREE AUDITS EVERY YEAR:

- D.C. CODE § 1-1188.20(C) PROVIDES THAT THE OIG SHALL CONDUCT AN ANNUAL AUDIT OF THE ANTIFRAUD FUND;

- D.C. CODE § 2-2313(D) PROVIDES THAT THE OIG SHALL CONDUCT AN ANNUAL AUDIT OF THE ACCOUNTS OF THE BOARD OF PROFESSIONAL ENGINEERS; AND

- D.C. CODE § 45-2205(A) PROVIDES THAT THE OIG SHALL CONDUCT AN ANNUAL AUDIT OF THE HOME PURCHASE ASSISTANCE FUND.

THE VALUE OF PERFORMING THESE AUDITS EVERY YEAR IS RELATIVELY LOW COMPARED TO THE OTHER WORK PERFORMED BY THE AUDIT DIVISION. A SIGNIFICANT AMOUNT OF TIME IS SPENT ON THESE AUDITS - TIME THAT WE BELIEVE COULD BE BETTER SPENT ON OTHER MATTERS. FOR EXAMPLE, IN FISCAL YEAR 1999, THE AUDIT OF THE HOME PURCHASE ASSISTANCE FUND REQUIRED THE FULL-TIME LABOR OF AN OIG AUDITOR FOR THREE AND A HALF MONTHS.

IT SHOULD BE NOTED THAT SUCH A CHANGE WOULD BE CONSISTENT WITH OTHER PROVISIONS OF THE D.C. CODE THAT AUTHORIZE, BUT DO NOT REQUIRE, THE OIG TO CONDUCT CERTAIN AUDITS. SEE, E.G. D.C. CODE § 7-1075 (THE BOOKS, RECORDS, AND ACCOUNTS OF THOSE RECEIVING A PERMIT TO OCCUPY PUBLIC PROPERTY "MAY BE INSPECTED AND AUDITED BY THE DISTRICT 0F COLUMBIA INSPECTOR

GENERAL") (EMPHASIS ADDED); D.C. CODE § 46-105(A) (EMPLOYER CONTRIBUTIONS TO THE UNEMPLOYMENT TRUST FUND "SHALL BE SUBJECT TO AUDIT BY THE OFFICE OF THE INSPECTOR GENERAL") (EMPHASIS ADDED); D.C. CODE § 46-109 (PAYMENT OF BENEFITS FROM THE UNEMPLOYMENT TRUST FUND "SHALL BE SUBJECT TO *** AUDIT BY THE OFFICE OF THE INSPECTOR GENERAL").

THE SECOND PROPOSAL AMENDS THE D.C. CODE TO ELIMINATE THE LANGUAGE REQUIRING OIG REVIEW OF CANCELLED SOLICITATIONS.

THE SECOND PART OF THIS LEGISLATIVE PROPOSAL INVOLVES D.C. CODE § 1-1183.7. THAT STATUTE PROVIDES IN FULL AS FOLLOWS:

> "AN INVITATION FOR BIDS, A REQUEST FOR PROPOSALS, OR OTHER SOLICITATIONS MAY BE CANCELLED, OR ALL BIDS OR PROPOSALS MAY BE REJECTED, ONLY IF IT IS DETERMINED IN WRITING BY THE DIRECTOR [OF THE DEPARTMENT OF ADMINISTRATIVE SERVICES] THAT THE ACTION IS TAKEN IN THE BEST INTEREST OF THE DISTRICT GOVERNMENT. THIS INFORMATION MUST BE FORWARDED TO THE INSPECTOR GENERAL FOR REVIEW WITHIN 72 HOURS OF THE ACTION."

PURSUANT TO THIS STATUTE.) IT HAS BEEN THE PRACTICE OF THE OIG TO REVIEW CAREFULLY SUCH CANCELLATIONS AND REJECTIONS AND INDICATE IN WRITING WHETHER OR NOT THE OIG CONCURS IN THE DIRECTOR'S BEST-INTEREST DETERMINATION.

THE OIG'S REVIEWS, HOWEVER, ARE OF LITTLE VALUE BECAUSE THEY ARE PERFORMED AFTER THE CANCELLATION OR REJECTION HAS OCCURRED, AND THE REVIEW HAS NO EFFECT WHATSOEVER UPON THE CANCELLATION OR REJECTION - EVEN IF THE OIG DISAGREES WITH THE DIRECTOR'S BEST-INTEREST DETERMINATION. THUS, PERFORMING SUCH REVIEWS IS

NOT AN OPTIMAL USE OF OIG RESOURCES. THE OIG'S REVIEWS ALSO CONSUME A CONSIDERABLE AMOUNT OF STAFF TIME. IN FISCAL YEAR 1999, REVIEWING THE DIRECTOR'S BEST-INTEREST DETERMINATIONS WILL TAKE UP THE EQUIVALENT OF ONE AND A HALF MONTHS OF FULL-TIME WORK BY AN OIG AUDITOR. ACCORDINGLY, WE PROPOSE THAT THE LAST SENTENCE OF D.C. CODE § 1-1183.7 BE REPEALED.

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THANK YOU FOR CONSIDERING THE REVISIONS AND ADDITIONS PROPOSED HEREIN. MY STAFF AND I STAND READY TO PROVIDE ANY INFORMATION OR ASSISTANCE YOU MAY REQUIRE.